

06/08/01 11042 U.S. PTO

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No.: 5899-A-05

(Cont. A-01)

11000 U.S. PTO
09/878307
06/08/01

Express Mail Label No. EL 816743135US

Date of Deposit June 8, 2001

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Box Patent Application, Assistant Commissioner for Patents, Washington, D.C. 20231

Ruth Holbrook
Ruth Holbrook

Date: June 8, 2001

Anticipated Classification
of this application:

Class ____ Subclass ____

Prior application:

Examiner: D. Ruddy

Art Unit: 3739

Asst. Commissioner for Patents
Washington, D.C. 20231
BOX PATENT APPLICATION

Dear Sir:

This is a request for filing a continuation application under 37 C.F.R. §1.53(b) of pending prior application Serial No. 08/873,999, filed June 12, 1997, of Garth W. Gobeli for "METHOD AND DEVICE FOR GLUCOSE CONCENTRATION MEASUREMENT WITH SPECIAL ATTENTION TO BLOOD GLUCOSE DETERMINATIONS".

1. X Enclosed is a copy of the prior application, including the oath or Declaration dated March 6, 1998 as filed March 9, 1998 and a Declaration verifying it as a true copy.
- 1a X Enclosed is a copy of a "PETITION FOR FILING BY OTHER THAN THE INVENTOR UNDER 37 C.F.R. § 1.47(b)" and a copy of a "DECISION ACCORDING STATUS UNDER 37 C.F.R. 1.47(a)".
2. X A copy of a "Verified Statement Claiming Small Entity Status" document dated March 6, 1998 as filed in the prior application is enclosed.
3. X The filing fee is calculated as shown below:

CLAIMS AS FILED INCLUDING PRELIMINARY AMENDMENT

Total Claims 19 - 20 = 0 x \$9.00 = \$.00

Independent

Claims 5 - 3 = 2 x \$40.00 = \$ 80.00

Basic Filing Fee \$355.00

Total Filing Fee \$435.00

4. X The Commissioner is hereby authorized to charge any additional fees which may be required by this paper to Deposit Account No. 03-0088 and to credit any overpayment to this Deposit Account. Two (2) duplicate copies of this sheet are enclosed.

5. X A check in the amount of \$435.00 is enclosed for the filing fee for a small entity.

6. X Cancel in this application original Claims 2-43 of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

7. X Amend the specification by inserting before the first line the sentence: --This application is a continuation of application Serial No. 08/873,999, filed June 12, 1997 entitled "METHOD AND DEVICE FOR GLUCOSE CONCENTRATION MEASUREMENT WITH SPECIAL ATTENTION TO BLOOD GLUCOSE DETERMINATIONS"--.

8. Transfer the drawings from the prior application to this application and abandon said prior application as of the filing date accorded this application. A duplicate copy of this sheet is enclosed for filing in the prior application filed. (May only be used if signed by person authorized by Rule 138 and before payment of base issue fee.)

8a. X Nine (9) sheets of formal drawings (Figs. 1-13) are enclosed.

8b. Priority of application Serial No. filed on in is claimed under 35 U.S.C. 119.

 The certified copy has been filed in prior application Serial No. , filed .

9. X The prior application is assigned to TECMED, INCORPORATED (a New Mexico corporation). A copy of this Assignment and respective Recordation Cover Sheet are enclosed.

10. X The Power of Attorney in the prior application is to: Charles R. Hoffman, Reg. No. 26,556; William C. Cahill, Reg. No. 19,742; C. Robert von Hellens, Reg. No. 25,714; Marvin A. Glazer, Reg. No. 28,801; and Thomas G. Watkins, III, Reg. No. 27,964; CAHILL, SUTTON & THOMAS P.L.C.

10a. X The above Power of Attorney was filed in the prior application.

10b. X A copy of the Power of Attorney in the prior application is enclosed.

10c. X Address all future communications to: Charles R. Hoffman, Esq., CAHILL, SUTTON & THOMAS P.L.C., 2141 East Highland Avenue, 155 Park One, Phoenix, Arizona 85016

11. X A Preliminary Amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)
12. X A Declaration of Charles R. Hoffman is enclosed.
13. X An "Information Disclosure Statement" filed in the parent application on June 12, 1997, accompanied by a copy of PTO Form 1449, and a "Supplemental Information Disclosure Citation" filed in the parent application on November 12, 1998, accompanied by a copy of PTO Form 1449", are enclosed. Copies of all the listed references were previously forwarded to the Patent Office and are on file with the parent application (Serial No. 08/873,999).

The undersigned declare further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

June 8, 2001
Date

Charles R Hoffman
Charles R. Hoffman, Reg. No. 26,556

Address of signator:

2141 East Highland Avenue
155 Park One
Phoenix, Arizona 85016
(602) 956-7000

☐ Inventor(s)
☐ Assignee of complete interest
☒ Attorney or agent of record
☐ Filed under Rule 34(a)



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

CAHILL SUTTON & THOMAS
155 PARK ONE
2141 E HIGHLAND AVENUE
PHOENIX AZ 85016

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SEP 03 1998

In re Application of
Gobeli
Application No. 08/873,999
Filed: June 12, 1997
For: Method and Device for Glucose
Concentration Measurement with
Special Attention to Blood Glucose
Determinations

SPECIAL PROGRAMS OFFICE
DAG FOR PATENTS
: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

For Use By CS&T Docket Clerk Only
Remarks: 5899-A-1 CAG
Date: 9-9-98 Signed: [Signature]

This is in response to the petition under 37 CFR 1.47(b), filed March 13, 1998, and supplemented August 20, 1998.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47 status.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

Karin Tyson
Senior Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

RECEIVED

SEP 8 1998

CAHILL, SUTTON, THOMAS, P.L.C.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Garth W. Gobeli
SERIAL NO.: 08/873,999 Date: March 9, 1998
FILED: June 12, 1997
FOR: METHOD AND DEVICE FOR GLUCOSE CONCENTRATION MEASUREMENT
WITH SPECIAL ATTENTION TO BLOOD GLUCOSE DETERMINATIONS

PETITION FOR FILING BY OTHER THAN THE INVENTOR
UNDER 37 C.F.R. § 1.47(b)

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The applicant, TecMed, Incorporated (hereinafter "TecMed"), hereby petitions the commissioner to accept the filing of the above-identified U. S. patent application filed on 6/12/97 without the sole inventor's signature.

The required petition fee in the amount of \$130.00 for a small entity under 37 C.F.R. § 1.17(h) is submitted herewith.

The commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 03-0088. Two (2) duplicate copies of this paper are enclosed.

Enclosed are:

(1) the Declaration of Alan J. Leszinske (President, TecMed) and its appended Exhibit A;

(2) the Declaration of Roy A. Anuskewicz, Jr. and its appended Exhibits A-E; and

(3) a Declaration and Power of Attorney for the patent application, executed on behalf of TecMed by Alan J. Leszinske, President of TecMed.

Exhibit A to the Declaration of Alan J. Leszinske is a copy of a "Technology Purchase Agreement" signed by TecMed and Mr. Gobeli on August 28, 1995. As indicated in Paragraph 4 of the Declaration of Alan J. Leszinske, after the "Technology Purchase Agreement" was executed on August 28, 1995, Mr. Gobeli was in charge of developing for TecMed a portable system for blood sugar level measurement, which is disclosed in detail in the above-identified patent application.

As indicated in Paragraph 5 of the Declaration of Alan J. Leszinske, Mr. Gobeli cooperated fully with TecMed's patent attorney in preparation of the specification, drawings, and claims of the above-identified patent application.

Therefore, it is respectfully submitted that the above "Technology Purchase Agreement" establishes TecMed's proprietary interest in the above-identified patent application.

As indicated in Paragraphs 6 and 7 of the Declaration of Alan J. Leszinske, Mr. Leszinske made several personal requests to Mr. Gobeli that he sign a Declaration and Power of Attorney for the above-identified patent application, and that Mr. Gobeli refused to do so. Mr. Leszinske then asked Roy A. Anuskewicz Jr., an attorney who represents TecMed, to present a Declaration and Power of Attorney for the above-identified patent application to Mr. Gobeli and ask him to sign it.

Paragraphs 2-6 of the Declaration of Roy A. Anuskewicz, Jr. show that on several occasions Mr. Gobeli was properly given an adequate opportunity to join in the application. Paragraph 6 of the Declaration of Roy A. Anuskewicz, Jr. shows that Mr. Gobeli, with the Declaration and Power of Attorney in front of him, refused to execute the Declaration and Power of Attorney.

Paragraph 9 of the Declaration of Alan J. Leszinske indicates that severe alcohol abuse by Mr. Gobeli is a factor in Mr. Gobeli's refusal to execute the Declaration and Power of Attorney which was properly presented to him on several occasions.

As stated in Paragraph 6 of the Declaration of Alan J. Leszinske, TecMed is actively developing and improving the blood glucose measurement system disclosed in the above-identified patent application and intends to introduce a system that incorporates the invention to the marketplace as soon as possible. As a result of such activities, the right to apply for a foreign patent is very likely to be lost, and the right to apply for a U. S. patent is very likely to be lost under 35 U.S.C. § 102 if TecMed does not apply for the patent under 37 C.F.R. § 47(b). This will result in the irreparable damage if TecMed does not apply for a U. S. patent under 37 C.F.R. § 47(b).

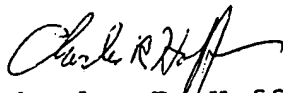
Furthermore, in the event that closer prior art than previously known to TecMed is discovered, the right to rely on the filing date of the above application will be lost, resulting in irreparable damage if TecMed does not apply for the patent under 37 C.F.R. § 47(b).

In view of the foregoing, it is respectfully submitted that this petition and the accompanying declarations comply with the

requirements of 37 C.F.R. § 47(b).

Respectfully submitted,

CAHILL, SUTTON & THOMAS P.L.C.

A handwritten signature in cursive script, appearing to read "Charles R. Hoffman".

Charles R. Hoffman
Registration No. 26,556

2141 East Highland Avenue
155 Park One
Phoenix, Arizona 85016
(602) 956-7000
Docket No. 5899-A-01

Form PTO-1595
1-31-92

RECORDATION FORM COVER SHEET

U.S. Department of Commerce
Patent and Trademark Office

To the Honorable Commissioner of Patent and Trademarks: Please record the attached original documents or copy the:

1. Name of conveying party(ies):

Garth W. Gobell

2. Name and address of receiving party(ies):

Name: TECMED, INCORPORATED
Internal Address: 5012 Copper Blvd., N.E.
Albuquerque, New Mexico 87108Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: April 23, 2001

Street Address: Same

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

A. Patent Application No. (s)
Patent Application Serial No. 08/873,999 filed 6/12/97 and
entitled "METHOD AND DEVICE FOR GLUCOSE CONCENTRATION MEASUREMENT
WITH SPECIAL ATTENTION TO BLOOD GLUCOSE DETERMINATIONS", our
Docket No. 5899-A-01.

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning Total number of applications and patents involved

Name: Charles R. Hoffman
Cahill, Sutton & Thomas P.L.C.
Internal Address:
2141 E. Highland Avenue, Ste. 155
Phoenix, Arizona 85016

One

7. Total Fee (37 CFR 3.41) \$40.00

☒ Enclosed
☐ Authorized to be charged to deposit account

Street Address: Same

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

City: State: Zip:

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true original document.

Charles R. Hoffman
Name of Person Signing
SignatureApril 25, 2001
Date

Total number of pages including cover sheet, attachments, and document: 3